

**ADOPTED REGULATION OF THE
STATE BOARD OF EDUCATION**

LCB File No. R042-05

Effective October 31, 2005

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §1, NRS 385.080 and 388.405; §2, NRS 385.080; §§3, 4, 5 and 7, NRS 385.080, 389.015 and 389.550; §§6 and 9, NRS 385.080, 389.017 and 389.560; §8, NRS 385.080 and 389.550; §10, NRS 385.080.

A REGULATION relating to examinations; revising provisions relating to the examinations administered to pupils; and providing other matters properly relating thereto.

Section 1. NAC 388.645 is hereby amended to read as follows:

388.645 1. ~~[Except as otherwise provided in subsection 3, a]~~ A school district may, at any time, but shall, at least every 2 years, reassess a pupil who is classified as an English language learner pursuant to NAC 388.625 to determine whether the pupil's proficiency in English is fluent and he is able to succeed in courses of study that are taught only in English.

2. A pupil may be reclassified pursuant to this section only if:

(a) The pupil's academic performance and his proficiency to comprehend, speak, read and write English is assessed by his teacher and the teacher documents his rationale for recommending the pupil for courses of study which are taught only in English without further instruction in the English language;

(b) The parents or legal guardian of the pupil is:

(1) Notified, in the primary language of the parents or legal guardian, that the pupil is being considered for reclassification;

- (2) Given an opportunity to review the data relating to the performance of the pupil; and
- (3) Allowed to participate in the determination of whether the pupil should be reclassified;

and

(c) The school district administers to the pupil an examination selected by the district from a list of examinations approved by the Department to assess the pupil's proficiency to comprehend, speak, read and write English and the pupil obtains a score on the examination that is equal to or greater than a score for a person who is fluent in speaking, reading and writing English, as established by the publisher of the examination.

3. ~~[A school district is not required to administer to a pupil who is exempt from the provisions of NAC 389.063 an examination to assess the pupil's proficiency to read and write English. Such a pupil may not be reclassified pursuant to this section.~~

~~—4.]~~ A reassessment of a pupil's proficiency to comprehend, speak, read and write English must be administered by a person who is proficient in the language in which the examination is given and who has successfully completed training in the administration and scoring of the examination required for the reassessment.

Sec. 2. NAC 389.027 is hereby amended to read as follows:

389.027 "High school proficiency examinations" means the criterion-referenced examinations that:

1. Are administered to pupils in this State before the completion of grade ~~[11]~~ **10** pursuant to NRS 389.015; ~~[and]~~
2. *Are administered to pupils in this State before the completion of grade 11 pursuant to NRS 389.015 and 389.550; and*
3. Pupils must pass to receive a standard high school diploma.

Sec. 3. NAC 389.051 is hereby amended to read as follows:

389.051 1. Except as otherwise provided in subsection 2, the board of trustees of each school district and the governing body of each charter school, respectively, shall administer the examinations required by NRS 389.015 and 389.550 in each public school in that district and each charter school which has the appropriate grades at the following times:

(a) For grades 3 ~~[and 5,]~~ *through 8*, criterion-referenced examinations in reading, ~~[and]~~ mathematics *and science as provided in NAC 389.061* must be administered ~~[within the period beginning 2 weeks before and ending 2 weeks after the 165th day of instruction for the class that is tested.]~~ *in the spring semester on the dates specified by the Department of Education.*

(b) For grades 4, ~~[8]~~ *7* and 10, norm-referenced examinations in reading, language, mathematics and science must be administered in ~~[October]~~ *the spring semester* on the dates specified by the Department of Education.

(c) For grades ~~[4]~~ *5* and 8, the examination in writing must be administered *in the spring semester* on the date specified by the Department of Education.

(d) For grade 11, the high school proficiency examination in writing must be administered in ~~[February]~~ *November* on the date specified by the Department of Education.

(e) For grade 12 and for adults, the high school proficiency examination in writing must be administered in:

- (1) February;
- (2) *March or* April;
- (3) The summer months; and
- (4) ~~[October,]~~ *November,*

↪ on the respective dates specified by the Department of Education.

(f) For grade 12 and for adults, the high school proficiency examination in writing may be administered, upon the direction of the Department of Education, to those pupils who have not yet passed the examination, on a date specified by the Department which must be approximately 2 weeks before the date of graduation.

(g) For grade 10, the high school proficiency examinations in reading, mathematics and science must be administered in April on the dates specified by the Department of Education.

(h) For grade 11, the high school proficiency examinations in reading, mathematics and science must be administered in:

(1) April; and

(2) The summer months,

↪ on the respective dates specified by the Department of Education.

(i) For grade 12 and for adults, the high school proficiency examinations in reading, mathematics and science must be administered in:

(1) February;

(2) *March or* April;

(3) The summer months; and

(4) November,

↪ on the respective dates specified by the Department of Education.

(j) For grade 12 and for adults, the high school proficiency examinations in reading, mathematics and science may be administered, upon the direction of the Department of Education, to those pupils who have not yet passed one or more of those examinations, on the dates specified by the Department, which must be approximately 2 weeks before the date of graduation.

2. Not later than May 1 of each year, the board of trustees of a school district in which a school with a 12-month school program is located or the governing body of a charter school with a 12-month school program shall, if pupils who attend the school are not expected to be in session on one of the dates prescribed in subsection 1 for the administration of an examination, consult with the standards, curricula and assessments team of the Department of Education to establish another date for the administration of that examination. Not later than June 1 of that year, the standards, curricula and assessments team shall provide the board of trustees or the governing body of a charter school with written confirmation of the date agreed upon pursuant to this subsection.

3. ~~[The assessment of a pupil whose primary language is not English pursuant to NAC 389.063 must be administered before the earliest date on which the pupil would be required to take the proficiency examination required for his grade level if his primary language were English.~~

~~—4.]~~ The Department of Education may schedule a special administration of any examination required to be passed for graduation if:

- (a) The person taking the examination is a pupil *enrolled* in grade 12;
- (b) That person, through no fault of his own, was not able to take the examination at its most recent administration; and
- (c) No regular administration of the examination is scheduled before the date on which the person is otherwise eligible to graduate.

Sec. 4. NAC 389.056 is hereby amended to read as follows:

389.056 Achievement and proficiency examinations must be administered as follows:

1. For grades 4, ~~[8]~~ 7 and 10, the reading, mathematics, language and science norm-referenced examinations must be administered pursuant to the instructions in the current edition of ~~[“Comprehensive Test of Basic Skills, TerraNova, Test Directions for Teachers: Level 14/22,” copyright 1996 by CTB/McGraw Hill. If a pupil with a disability in grade 4, 8 or 10 is required to take the examination, the pupil must be included in the regular administration of the examination if the pupil can be adequately tested under acceptable accommodations as set forth in the current edition of the “Nevada Proficiency Examination Program, TerraNova Grades 4, 8, and 10 Test Coordinator’s Manual,” copyright 1997 by CTB/McGraw Hill.]~~ *the manual for administration and the test coordinator’s manual prepared by the testing company and adopted by the Department of Education.*

2. For grades ~~[4]~~ 5 and 8, the examination in writing must be administered pursuant to the instructions in the current edition of “Administration Manual: Nevada ~~[Fourth]~~ *Fifth* & Eighth Grade Proficiency Examinations in Writing,” adopted by the Department of Education.

3. For grades 3 and 5, the criterion-referenced examinations required by NRS 389.550 must be administered pursuant to the instructions in the current edition of ~~[“Administration Manual: Nevada Criterion-Referenced Tests at Grades Three and Five,”]~~ *“Nevada Criterion-Referenced Tests Administration Manual,”* adopted by the Department of Education.

4. For grades 10 and above, the high school proficiency examinations must be administered pursuant to the instructions in the current edition of ~~[“Administration Manual: Nevada High School Proficiency Examinations in Mathematics, Science, Reading and Writing,”]~~ *“Nevada High School Proficiency Examination Administration Manual,”* adopted by the Department of Education.

Sec. 5. NAC 389.0565 is hereby amended to read as follows:

389.0565 1. Except as otherwise provided in this section, calculators may not be used by pupils taking ~~an~~ **any** examination in mathematics described in ~~subsection 1, 2, 3 or 4 of~~ NAC 389.061 ~~or~~, **including, without limitation**, the Nevada High School Proficiency Examination in Mathematics.

2. Each school district shall provide the pupils **enrolled** in a 4th grade, ~~8th~~ **7th** grade or 10th grade class within the district with the option of using calculators on ~~Part 2 of the “Mathematics Composite” portion of the Comprehensive Test of Basic Skills, TerraNova Complete Battery Plus,~~ **subtests identified as appropriate for use of a calculator by the test publisher**, if the pupils are routinely authorized to use calculators on other examinations administered to the class.

3. A pupil may use a calculator while taking the Nevada High School Proficiency Examination in Mathematics if he is enrolled in a program of special education pursuant to NRS 388.440 to 388.520, inclusive, and his individual education plan specifies that he may use a calculator for assessment purposes.

4. A pupil may use a calculator while taking a portion of the Nevada High School Proficiency Examination in Mathematics if the Department of Education has specified that a calculator may be used while taking that portion of the examination.

Sec. 6. NAC 389.058 is hereby amended to read as follows:

389.058 ~~1. Except as otherwise provided in subsection 2, a~~ **A** private entity that has contracted with the State Board **of Education** to score the examinations **administered** pursuant to NRS 389.015 or 389.550 shall report the results of the examinations in writing to the Department of Education.

~~[2.—The provisions of subsection 1 do not apply to the results of examinations administered to:~~

~~—(a) Pupils whose primary language is not English. The number of such pupils who are examined pursuant to NAC 389.063 must be reported separately by the private entity scoring the examinations based on the answer sheet submitted to the entity by the school district for each pupil examined pursuant to NAC 389.063.~~

~~—(b) Pupils who are enrolled in a program of special education pursuant to NRS 388.440 to 388.520, inclusive, and who are not gifted or talented pupils.]~~

Sec. 7. NAC 389.061 is hereby amended to read as follows:

389.061 ~~[Except as otherwise provided in NAC 389.063, the]~~ *The* following norm-referenced and criterion-referenced examinations must be used as examinations of achievement and proficiency:

1. For ~~[grades 3 and 5,]~~ *grade 3*, the criterion-referenced examinations that must be used are the Nevada Third ~~[and Fifth]~~ Grade Examinations in Mathematics and Reading prescribed by the Department of Education for each testing period. Each edition of those examinations ~~[that is used commencing in the spring semester of 2001,]~~ must be based upon the standards of content and performance adopted pursuant to NRS 389.520.

2. For grade 4:

(a) The norm-referenced examinations that must be used are the ~~["Reading Composite," "Mathematics Composite," "Language Composite" and "Science" portions of Level 14, Comprehensive Test of Basic Skills, TerraNova Complete Battery Plus.]~~ *subtests comprising the reading, language, mathematics and science portions of the norm-referenced examination adopted by the Department of Education.*

(b) The criterion-referenced ~~[examination]~~ *examinations* that must be used ~~[is]~~ *are* the Nevada ~~[Proficiency Examination in Writing for the]~~ Fourth Grade *Examinations in Mathematics and Reading* prescribed by the Department of Education for each testing period. *Each edition of those examinations must be based upon the standards of content and performance adopted pursuant to NRS 389.520.*

3. *For grade 5, the criterion-referenced examinations that must be used are:*

(a) *The Nevada Proficiency Examination in Writing for the Fifth Grade prescribed by the Department of Education for each testing period; and*

(b) *The Nevada Fifth Grade Examinations in Mathematics, Reading and Science prescribed by the Department of Education for each testing period. Each edition of those examinations must be based upon the standards of content and performance adopted pursuant to NRS 389.520.*

4. *For grade 6, the criterion-referenced examinations that must be used are the Nevada Sixth grade Examinations in Mathematics and Reading prescribed by the Department of Education for each testing period. Each edition of those examinations must be based upon the standards of content and performance adopted pursuant to NRS 389.520.*

5. *For grade 7:*

(a) *The norm-referenced examinations that must be used are the subtests comprising the reading, language, mathematics and science portions of the norm-referenced examination adopted by the Department of Education.*

(b) *The criterion-referenced examinations that must be used are the Nevada Seventh Grade Examinations in Mathematics and Reading prescribed by the Department of Education*

for each testing period. Each edition of those examinations must be based upon the standards of content and performance adopted pursuant to NRS 389.520.

6. For grade 8 ~~is~~:

~~—(a) The norm-referenced examinations that must be used are the “Reading Composite,” “Mathematics Composite,” “Language Composite” and “Science” portions of Level 18, Comprehensive Test of Basic Skills, TerraNova Complete Battery Plus.~~

~~—(b) The~~, *the* criterion-referenced ~~[examination]~~ *examinations* that must be used ~~[is the]~~ *are*:

(a) *The* Nevada Proficiency Examination in Writing for the Eighth Grade prescribed by the Department of Education for each testing period ~~is~~

~~—4.] ; and~~

(b) *The Nevada Eighth Grade Examinations in Mathematics and Reading prescribed by the Department of Education for each testing period. Each edition of those examinations must be based upon the standards of content and performance adopted pursuant to NRS 389.520.*

7. For grade 10 ~~is the~~:

(a) *The* norm-referenced examinations that must be used are the ~~[“Reading Composite,” “Mathematics Composite,” “Language Composite” and “Science” portions of Level 20, Comprehensive Test of Basic Skills, TerraNova Complete Battery Plus.~~

~~—5. For grade 10, the]~~ *subtests comprising the reading, language, mathematics and science portions of the norm-referenced examination adopted by the Department of Education.*

(b) *The* criterion-referenced examinations that must be used are:

~~[(a)]~~ (1) The Nevada High School Proficiency Examination in Reading;

~~[(b)]~~ (2) The Nevada High School Proficiency Examination in Mathematics; and

~~[(c) The]~~

(3) Commencing with the graduating class of the 2009-2010 school year, the Nevada High School Proficiency Examination in Science,

↪ prescribed by the Department of Education for each testing period.

~~[6.]~~ **8.** For grades 11 and above, the criterion-referenced examinations that must be used are:

(a) The Nevada High School Proficiency Examination in Reading;

(b) The Nevada High School Proficiency Examination in Mathematics;

(c) ~~[The]~~ *Commencing with the graduating class of the 2009-2010 school year, the* Nevada High School Proficiency Examination in Science; and

(d) The Nevada High School Proficiency Examination in Writing for the Eleventh Grade and Above,

↪ prescribed by the Department of Education for each testing period.

Sec. 8. NAC 389.071 is hereby amended to read as follows:

389.071 1. Each edition of the Nevada High School Proficiency Examination in Writing for the Eleventh Grade and Above to be used after the fall *semester* of 1988 must require pupils to write on two topics to be chosen from the following styles of writing:

(a) Descriptive or narrative writing;

(b) Expository writing; or

(c) Persuasive writing.

2. Each edition of the Nevada Proficiency Examination in Writing for the ~~[Fourth]~~ *Fifth* and Eighth Grade must require pupils to write on one topic to be chosen from the following styles of writing:

(a) Descriptive writing;

(b) Narrative writing;

- (c) Expository writing; or
- (d) Persuasive writing.

Sec. 9. NAC 389.083 is hereby amended to read as follows:

389.083 1. A school district shall keep the results of all examinations administered pursuant to NRS 389.015 to pupils in grades 4, 7 and ~~8~~ 10 for 4 years after the date of the administration of the examination.

2. A school district shall keep the results of all examinations administered pursuant to NRS 389.550 to pupils in grades 3 ~~and 5 for 2~~ through 8 for 4 years after the date of the administration of the examination.

3. The Department of Education shall maintain a list of the name and scores of each pupil who takes the High School Proficiency Examinations for 10 years after the date of the administration of the examination.

Sec. 10. NAC 389.052, 389.063 and 389.066 are hereby repealed.

TEXT OF REPEALED SECTIONS

389.052 Determination of whether pupil is exempt from taking examinations. A school shall determine whether a pupil is exempt from taking the examinations administered pursuant to NRS 389.015 in accordance with NAC 389.063, subsection 6 of NRS 389.017 and the current edition of the Guidelines for the Conduct of the Nevada Proficiency Examination Program published by the Department of Education.

389.063 Assessment of proficiency in English of pupils whose primary language is not English.

1. Each school district shall use the “Language Assessment Scales-Oral,” copyright 1990 by CTB/McGraw-Hill, and the “Language Assessment Scales-Reading/Writing,” copyright 1990 by CTB/McGraw-Hill, to assess the proficiency in the English language of pupils whose primary language is not English. Except as otherwise provided in subsections 2 and 3, the assessment must be used as the examination of achievement and proficiency for such pupils in grades 4, 8 and 10.

2. If a pupil in grade 4 is assessed at a level III or above as a result of the oral examination administered pursuant to subsection 1 and at a level II or above as a result of the examination of reading and writing administered pursuant to subsection 1, the pupil must also be required to complete the examinations required by NAC 389.061.

3. If a pupil in grade 8 or 10 is assessed at a level III or above as a result of the oral examination administered pursuant to subsection 1, at a level III or above as a result of the reading portion of the examination of reading and writing administered pursuant to subsection 1 and at a level II or above as a result of the writing portion of the examination of reading and writing administered pursuant to subsection 1, the pupil must also be required to complete the examinations required by NAC 389.061.

4. Except as otherwise provided in subsection 5, if a pupil is assessed below a level III on the oral examination administered pursuant to subsection 1, the pupils not required to complete the:

- (a) Examination of reading and writing prescribed in subsection 1.
- (b) Examinations required by NAC 389.061.

5. If a pupil in grade 3 or 5 is assessed at a level III or above as a result of the oral examination administered pursuant to subsection 1 and at a level II or above as a result of the examination of reading and writing administered pursuant to subsection 1, the pupil must also be required to complete the criterion-referenced examinations for grade 3 or 5, as applicable, required by NAC 389.061. A pupil who does not meet the level prescribed by this subsection may be required to take the appropriate criterion-referenced examination if, in the opinion of the pupil's teacher, useful information may be acquired concerning the pupil's academic status in reading or mathematics.

389.066 Scores indicating failure to demonstrate adequate achievement. A pupil who earns any of the following scores on the examinations administered pursuant to NRS 389.015 has not demonstrated adequate achievement:

1. For grade 4, 8 or 10, a score on the examination in reading, mathematics, language or science at or below the 25th percentile of the national norms for that examination.
2. For grade 4, a score on a trait on the examination in writing of below 3 indicates inadequate achievement for that trait only and not for all traits on the examination in writing.
3. For grade 3 or 5, a score on the examination in reading or mathematics that is below the category of "meets standard," as established by the State Board of Education.
4. For grade 8, a score on one or more of the traits that are separately scored on the examination in writing of below 3.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R042-05**

The State Board of Education adopted regulations assigned LCB File No. R042-05 which pertain to chapter 389 of the Nevada Administrative Code on August 21, 2005.

Notice date: 7/14/2005

Date of adoption by agency: 8/20/2005

Hearing date: 8/20/2005

Filing date: 10/31/2005

INFORMATIONAL STATEMENT

1. A description of how public comment was solicited, a summary of public response, and explanation how other interested persons may obtain a copy of the summary.

Notice of Workshop to Solicit Comments on Proposed Regulations was sent to approximately 150 individuals and educational organizations. One workshop was held on August 20, 2005. There was one comment from the public.

The Notice of Intent to Act Upon a Regulation for public hearing and adoption of the proposed revisions for amendments to NAC 389, Changes to reflect the move of writing assessment in grade 4 to grade 5; changes in State Assessments were sent to approximately 150 individuals and educational organizations. The public hearing was conducted on August 20, 2005 to provide the opportunity for comments by affected parties and the public. There was one presenter and one comment from the public. The State Board of Education adopted amendments to NAC 389.

2. The Number of Persons Who:

- a) Attended Each Hearing: Workshop: 6 First Hearing: 7 Second Hearing: N/A
- b) Testified at Each Hearing: Workshop: 1 First Hearing: 0 Second Hearing: N/A
- c) Submitted Written Statements: Workshop: 0 First Hearing: 0 Second Hearing: N/A

A copy of any written comments may be obtained by contacting Nita Barnes, Secretary to the State Board of Education, Nevada Department of Education, (775) 687-9225, or by writing to the Nevada Department of Education, 700 East Fifth Street, Carson City, Nevada 89701-5096.

3. A description of how comment was solicited from affected businesses, a summary of the response and an explanation how other interested parties may obtain a copy of the summary.

Comments were solicited through the workshop notice of July 14, 2005 and public hearing notice of July 14, 2005. At the August 20, 2005 Workshop to Solicit Comments, there was one public comment to the proposed language revisions. At the August 20, 2005 Public Hearing there were no public comments to the proposed language.

Summary of Comments

Public Workshop:

Dr. Dotty Merrill testified that Washoe County School District, the School Board Association, teachers and administrators strongly encourage support for these regulation changes.

A copy of the summary and/or minutes of the public hearing may be obtained by contacting Nita Barnes, Secretary to the State Board of Education, Nevada Department of Education, (775) 687-9225, or by writing to the Nevada Department of Education at 700 East Fifth Street, Carson City, Nevada 89701-5096.

4. If the regulation was adopted with or without change to any part of the proposed regulation, a summary of the reasons for adopting.

The Nevada State Board of Education/Nevada State Board for Career and Technical Education adopted the regulation language at the public hearing held August 20, 2005. The reason for adopting new language is Assembly Bill 154 from the 2005 Legislative session moved the writing assessment in grade four to grade five and the proposed language amends NAC 389.061, 389.071, 389.051, 389.056 and 389.066 referencing the writing assessment in grade four to reflect the change to grade five; and to bring NAC 389.083 and NAC 389.0564 up to date to reflect the inclusion of additional grades assessed on the criterion-referenced test, as well as changes in the norm-referenced test.

5. The estimated economic effect of the adopted regulation on the business that it is to regulate and on the public. These must be stated separately and each case must include:

There is no anticipated economic effect on the business which it regulates. There are no anticipated adverse effects on students or school districts. The beneficial, immediate and long term effects are unknown at this time. There is no estimated economic effect on the public, either adversely or beneficially, nor immediate or long term.

6. The estimated cost to the agency for enforcement of the adopted regulation.

There is no anticipated cost to the agency for enforcement of the adopted regulation.

7. A description of any regulations of other state or governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

No other state or governmental agency regulations will be overlapped or duplicated by the above noted regulation. There is no duplication or overlap of federal regulations.

8. If the regulation includes provisions which are more stringent than a federal regulation, which regulates the same activity, a summary of such provisions.

There are none.

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

This regulation does not provide for a new fee or increase an existing fee.